

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Jeremy Allen Hewitt, #303829,)	
)	C/A No. 0:09-1516-MBS
Plaintiff,)	
)	
vs.)	O R D E R
)	
South Carolina Department of)	
Corrections,)	
)	
Defendant.)	
_____)	

Plaintiff Jeremy Allen Hewitt is an inmate in custody of the South Carolina Department of Corrections (SCDC) who currently is housed at Turbeville Correctional Institution in Turbeville, South Carolina. Plaintiff, proceeding pro se, filed a complaint on June 10, 2009, asserting that he has been denied dental care in violation of his constitutional rights. He brings this action pursuant to 42 U.S.C. § 1983.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Paige J. Gossett for pretrial handling. The Magistrate Judge reviewed the complaint pursuant to the procedural provisions of 28 U.S.C. § 1915 and the Prison Litigation Reform Act, as well as applicable precedents. On July 22, 2009, the Magistrate Judge issued a Report and Recommendation in which she recommended that Plaintiff's complaint be summarily dismissed because (1) SCDC is entitled to Eleventh Amendment immunity, and (2) SCDC is not a "person" for purposes of § 1983. Plaintiff filed no objections to the Report and Recommendation. However, on July 29, 2009, Plaintiff filed a motion to amend to include the individuals that Plaintiff contends are liable for denying him dental care (Entry 9).

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of objections to the Report, this court is not required to give any explanation for adopting the recommendation. Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

Plaintiff has the right to amend his complaint as a matter of course before a responsive pleading is filed. Fed. R. Civ. P. 15(a)(1)(A). Accordingly, Plaintiff's motion is **granted**. It appearing that Plaintiff seeks to cure the deficiencies in his complaint as noted by the Magistrate Judge, the court declines to adopt the Magistrate Judge's recommendation that the complaint be summarily dismissed. The case is recommitted to the Magistrate Judge for additional pretrial handling.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

August 14, 2009.